

PATENT

Appl. No. 09/879,794  
Amdt. dated November 3, 2004  
Reply to Office Action of May 19, 2004

### REMARKS/ARGUMENTS

#### **I. Status of the Claims**

Claims 1-31 are pending.

#### **II. The Amendments Herein**

The amendments herein add no new matter.

Claim 21 has been amended to recite that the nuts have had their shells removed (that is, they have been "shelled"). The amendment is supported by the specification, for example, page 12, lines 13-15.

#### **III. The Office Action**

Applicants note with appreciation the allowance of claims 16-20 and the acknowledgement that claims 7-15 and 27-30 would be allowable if rewritten in independent form.

Claims 1-6, 21-26, and 31 are rejected on several grounds. Applicant amends in part and traverse the rejections. For clarity, the rejections are responded to below in the order in which they are presented in the Action.

##### **A. Rejection under 35 U.S.C. § 112, second paragraph**

Claims 1-6 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. According to the Action, it is "it is not seen that any and all cereal products would have an increased bowl life after treatment with water. It is not seen that oatmeal or rice would have an improved bowl life as a result of the claim[ed] process." Action, at page 2. Applicants traverse.

Applicants respectfully note that oatmeal and other cereals cooked to the consumer are not within the scope of the phrase "cereal product" recited in the claim under

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examination. The Examiner's attention is respectfully drawn to the definition set forth at page 4, lines 9-13 of the specification:

As used herein, "cereal product" refers to products other than breads and "hot cereals," that are made with cereal grains. "Hot cereals" such as oatmeal, farina, and grits generally require cooking by the consumer and are less popular than are the so-called "cold cereals," that are "ready-to-eat." Ready to eat ("RTE") cereals are encompassed by the cereal products that can be successfully treated by the methods of the invention.

Thus, oatmeal and other "hot cereals" cooked by the consumer are excluded by definition from the methods of the claims under examination.

The Examiner's attention is also respectfully drawn to MPEP § 2173.02. Section 2173.02 instructs the Examining Corps that claim language "must be analyzed, not in a vacuum but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level skill in the pertinent art at the time the invention was made." In light of the definition of "cereal product" contained in the application disclosure (element "A" of §2173.02), the person of skill in the art would not interpret claim 1 as presented as reading on oatmeal or rice (element "C").

Thus, read in light of the definition of "cereal product" set forth in the application disclosure, the claims particularly point out and distinctly claim the subject matter regarded as the invention. Reconsideration and withdrawal of the rejection is respectfully requested.

#### B. Rejection of the claims under 35 U.S.C. § 103(a)

Claims 21-26 and 31 are rejected under 35 U.S.C. § 103(a) as obvious over Bloch, U.S. Patent No. 3,022,807 ("Bloch"). According to the Action,

"Bloch discloses treating pistachio nuts to remove the shells. The shelf life of the nuts may be improved by the addition of preservatives to the treatment water (column 2, lines 64-68). The nuts are treated by placing the nuts in water and

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subjecting them to water under superatmospheric pressure for a period long enough to split the shells of the nuts. After the shells are removed, the nuts are then dried to a 6% moisture content. . . . It is appreciated that mild abrasion is not disclosed in Bloch but the extent of abrasion in the nuts is seen to be dependent upon the amount of nuts that are packed in the original processing container. It would have been obvious to one of ordinary skill in the art to utilize the process of Bloch to increase the shelf life of a nut."

Action, at page 3. Applicants amend in part and traverse.

Claim 21 has been amended to recite that the nut has been shelled. The pistachio nuts that are the subject of Bloch are in their shells. Indeed, what Bloch teaches is how to increase the percentage of pistachios -- in their shells -- which have a visible split between the two halves of their shells. As Bloch notes:

"[m]ost pistachio nuts are marketed in the shell and reach the consumer roasted and salted in the shell. Because of this marketing practice the condition of the shells - that is, whether they are split or unsplit - is a significant quality factor."

Bloch, column 1, lines 26-30. The "split" refers to the shells. Bloch explains:

"any orchard-run lot will be found to contain (a) split nuts and (b) unsplit nuts.

Those in the first category are referred to as split nuts because their shells (not the kernels) are partly open along their seams."

*Id.*, at lines 34-37 (Emphasis added). (As this passage makes clear, when Bloch refers to "nuts," he is referring to nuts in their shells. It may be Bloch's confusing reference to nuts in their shells as "nuts" that led the Action to incorrectly state that Bloch teaches "treating pistachio nuts to remove their shells.")

Bloch's solution to the problem of increasing the percentage of nuts with split shells is simple:

The process of the invention is outstanding in its simplicity in that the splitting is attained by merely placing the nuts in a container and subjecting the nuts to water under superatmospheric pressure.

Bloch, at column 2, lines 3-6.

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Thus, the teaching of Bloch is that subjecting shelled pistachio nuts to water under superatmospheric pressure increased splitting of the shells, and therefore the quality of the nuts (which are still in their shells) as perceived by the consumer.

As noted, claim 21 has been amended to refer to shelled nuts. Bloch contains no teaching that it would be beneficial to subject nuts that have been removed from their shells to water. Nor does Bloch contain a suggestion or motivation to do so since the contacting is intended to split the shell, which by definition is now no longer present.

For the sake of good order, Applicants also wish to comment on the Action's statement that "it is appreciated that mild abrasion is not disclosed in Bloch but the extent of abrasion in the nuts is seen to be dependent upon the amount of nuts that are packed in to the original processing container." Action at page 3. The abrasion contemplated by the claimed method cannot apply to the methods discussed by Bloch. The nuts treated by Bloch's methods are still in their shells, and the shells protect the nuts themselves from abrasion or even contact with other nuts. Thus, if someone following Bloch's teachings packs the nuts (which are in their shells) in the processing container, the shells may undergo abrasion, but the nuts will not. The abrasion contemplated by the current claimed methods will not occur.

Reconsideration and withdrawal of the rejection in light of the amendment is respectfully requested.

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**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, the Examiner is requested to telephone the undersigned at 415-576-0200

Respectfully submitted,

  
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